

Justice for the young: a snapshot

A briefing for anyone concerned about children and young people's access to legal aid

February 2015

Key points:

- Evidence of the impact of legal aid cuts on children and young people is mounting
- The Ministry of Justice has abandoned a promised review of children's access to legal aid
- New data shows that the number of children and young people receiving legal aid is falling – in Social Welfare and Immigration and Asylum law to well below even the post-LASPO (Legal Aid, Sentencing & Punishment of Offenders Act) levels anticipated by the Government
- The Exceptional Case Funding 'safety net' is not working for the benefit of vulnerable children and young people – only 3 children were granted exceptional funding in 12 months
- JustRights calls on all political parties to commit to a review of children and young people's access to justice

1. Background

In September 2014 the Office of the Children's Commissioner released hard-hitting research¹ demonstrating the adverse impact of the cuts to legal aid on children and young people. The inability of children to access legal advice and representation deprives them of rights guaranteed by the United Nations Convention on the Rights of the Child.

JustRights therefore welcomed the subsequent announcement on 24th September 2014 by Simon Hughes MP, the Liberal Democrat family justice minister, that the Ministry of Justice would investigate whether vulnerable children were being deprived of access to justice. As reported in The Guardian,² Mr Hughes made a clear commitment to ensure cuts to legal aid should not be "*at the expense of the rights of children*". "*If there are gaps in the new system I am determined they are addressed urgently*", he said.

Yet five months later, it has been confirmed, in response to a Parliamentary Question, that the review has been abandoned.³

JustRights, which in December published its youth manifesto⁴ calling for free access to solicitors who specialise in working with young people, believes that the review is more essential than ever.

Joe Lee-Dowd, aged 21, a young campaigner working with JustRights, comments:

"Simon Hughes spoke about reviewing the impact of legal aid cuts on children as a matter of urgency, and now we are being told that we may have to wait until 2017 for this review – that's at least two more years of possible detriment to children and young people's rights and safety. Does he not realise that the changes have left children and young people vulnerable to abuse and exploitation right now? Young people are going to feel let down that he has failed to deliver on his promise, and question why it is that a matter of such 'urgency' has now been quietly swept under the carpet."

¹ *Child Rights Impact Assessment on Legal Aid*, Office of the Children's Commissioner, 2014.

² <http://www.theguardian.com/politics/2014/sep/24/simon-hughes-review-children-access-legal-aid>

³ Shailesh Vara, Parliamentary Under-Secretary of State at the Ministry of Justice, replying to written Parliamentary Question 223668 from Andy Slaughter MP, 10th February 2015: "*The MoJ is not currently conducting a specific review of children's access to legal aid... Ministers have considered, and will continue to consider, all representations and evidence about the impact of LASPO on young people. The Government plans to undertake a post-implementation review of the legal aid provisions within the Legal Aid, Sentencing and Punishment of Offenders Act 2012 within 3-5 years of implementation.*"

⁴ *Make Our Rights Reality*, JustRights/Youth Access, 2014.

2. Summary

Many areas of legal aid are simply no longer available. Other than in private law family matters, no exceptions have been made for children or young people. The removal of whole areas of work from the remit of legal aid has left many young people without help. It is impossible to tell how many people have been affected: many will not even know that the problems they are facing could have a legal solution. Yet the research by the Children's Commissioner demonstrates the grave consequences of legal aid not being available to deal with serious problems that young people face.

The Government has provided for a safety net through the possibility of applying for funding on an exceptional basis, although it says this is not available at all for prison law cases that have been cut.

Yet, recent data from the Ministry of Justice shows that the safety net is not working: while there is no doubt about the high levels of unmet legal need, there have been far fewer applications for funding than anticipated and only a tiny proportion of these are successful.

For those areas where legal aid remains available, the data so far overall shows a decrease in the use of legal aid by children and young people. With the exception of family law, grants of legal aid have reduced significantly in all areas, suggesting that what remains of legal aid is not getting to the people who really need it. JustRights believes there is a high probability that some children and young people are being exposed to exploitation, abuse and harm as a result.

3. Young people's unmet legal need in areas no longer funded by legal aid

Many areas of legal aid are simply no longer available. In April 2013, legal aid for a huge range of problems was removed or vastly restricted for issues such as housing, debt and education (see box for full list). If a person has legal problems in any of these areas, they may be able to apply for exceptional funding (see below). In December 2013, legal aid was removed for most prison law matters.

Areas of law that are no longer funded by legal aid (unless exceptional funding is granted)

- asylum support (except where accommodation is claimed)
- consumer
- debt (except where there is an immediate risk to the home)
- employment
- discrimination
- education (except for cases of Special Educational Needs)
- housing matters (except those where the home is at immediate risk, homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the County Court)
- immigration (except asylum and detention)

Other than in private law family matters, for which children under 18 can still obtain legal aid, no exceptions have been made for children or young people. The removal of whole areas of work from the remit of legal aid has left many young people without help. Despite ministers' repeated claims (most recently on 5th February 2015)⁵ that 95% of children and young people's cases remain within the scope of the legal aid scheme, the Ministry of Justice's own figures⁶ show that as many as 14% of all civil cases where a child under 18 is the applicant and 56% involving young adults aged 18-24 were expected to go out of scope as a result of the LASPO Act alone.

JustRights is particularly concerned about the plight of children and young people living independently from parents/carers who are experiencing social welfare law problems (e.g. housing, homelessness, debt,

⁵ Written answer by Simon Hughes MP on 05/02/15 to PQ 222962.

⁶ Data provided by MoJ to JustRights on 10/10/11 in response to Freedom of Information request. See JustRights briefing *Data on legal aid for children and young people*.

welfare benefits, education and employment) or immigration issues (particularly as separated children). It is impossible to tell how many have been left helpless because this information has not been gathered. Many young people will be suffering without even knowing that the problems they are facing could have a legal solution.

The impact assessment completed by the Children's Commissioner demonstrates the grave consequences of legal aid not being available for important problems that young people face. The report refers to a girl who had been permanently excluded from school. The girl had no idea that any evidence in support of her case should have been submitted prior to the exclusion hearing and reported feelings of intimidation from appearing in person at the hearing: *"It felt like I was a murder case. Apparently I was cold and calculating. I'd never heard someone using [that] unless it was a murder case. So I was sitting there and you had to wait your turn to say anything but it felt really intimidating coz you know they are all sitting there facing me and I didn't really say much and I cried. I just felt defenceless."*

The impact assessment concludes that *"in these circumstances, it is very unlikely that a child or young person can effectively participate in the hearing nor that all relevant information can be put before the tribunal to enable them to make a decision fairly and in the child's best interests."* The impact assessment endorses the conclusions of the desk-based research that *"significant numbers of children and young people will still have problems which require resolution and which are no longer in scope for funding, and in respect of which alternative help is limited. Therefore the initial assumption must be that, although unclear as to what degree, there are considerable numbers who are failing to be supported in resolving legal issues and as a result this will have a negative impact on them and their families."*

The Joint Committee on Human Rights⁷ feared in December 2013 that cuts to prison law *"could leave young people vulnerable and deny them their rights. The issues concerning young people may involve matters of housing law, social care law and public law of such complexity that they require access to legal advice and assistance in order to investigate and formulate their case. The availability of such funding in appropriate cases would be in accordance with the UNCRC."* The Howard League for Penal Reform, which runs a free advice line for children in prison, has found that these fears have materialised.

4. Trends in the pockets of legal aid remaining

For those areas where civil legal aid remains available, the overall data so far shows a decline in the use of legal aid by children and young people since 2010-11, i.e. both before and following the implementation of the LASPO Act in April 2013.⁸ However, the data presents a complex picture, with some areas of law showing huge drops in the use of legal aid by children and young people, while others are actually increasing.

Official data relating to **Civil Legal Aid** use overall, **Immigration and Asylum legal aid**, **Social Welfare legal aid** and **Family legal aid** are presented below (see 4.1 to 4.4).

JustRights believes further analysis of this data is required to gain a full understanding of the complex reasons underpinning the changing patterns in legal aid use by young people in each area of law.

Although the Ministry of Justice has been unable to provide a breakdown by age of the recipients of legal aid for what remains of **prison law**, official data shows there was a 42% fall in prison legal aid cases in July to September 2014 compared to the same period the previous year.⁹

There is also widespread concern that changes to the way legal aid is paid are having a 'chilling effect'¹⁰ on **judicial review** work. JustRights believes judicial review work is especially important for protecting young people.¹¹

⁷ *The implications for access to justice of the Government's proposals to reform legal aid*, Joint Committee on Human Rights, December 2013.

⁸ Response to Parliamentary Question 222917, 5 February 2015 and data available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322449/clients.csv

⁹ <https://www.gov.uk/government/statistics/legal-aid-statistics-july-2014-to-september-2014>

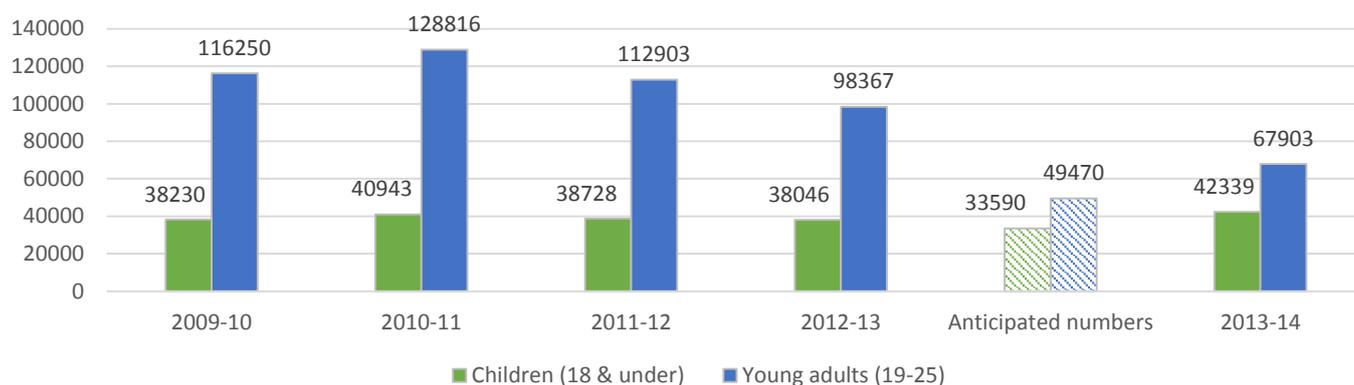
¹⁰ Lord Pannick, Lords' Hansard 7 May 2014 : Column 1541

¹¹ See JustRights briefing on Judicial Review http://justrights.org.uk/jr_HoLBriefing_0714

4.1 Trends in Civil Legal Aid use by young people (see Fig. 1):

- Numbers of cases where a child or young adult is the recipient of legal aid in their own right peaked in 2010-11 – two years before LASPO.
- In the first year following the implementation of LASPO changes in April 2013, the number of cases completed where children and young people received legal aid decreased by 13% in the financial year 2013-14 from the previous year.
 - Cases involving children increased by 4,231 (11%)
 - Those involving young adults fell by 30,464 (31%)
- Whilst the overall number of children and young people who received legal aid in 2013-14 is in excess of the post-LASPO numbers anticipated by MoJ beforehand,¹² this masks major differences between categories of law.
- Whilst Immigration and Asylum and Social Welfare cases involving both children and young adults have fallen dramatically, Family cases involving children have risen.

Fig. 1: Number of children & young people who received civil legal aid (incl. Family, Immigration & Social Welfare) 2009-10 to 2013-14 compared to post-LASPO numbers anticipated by MoJ



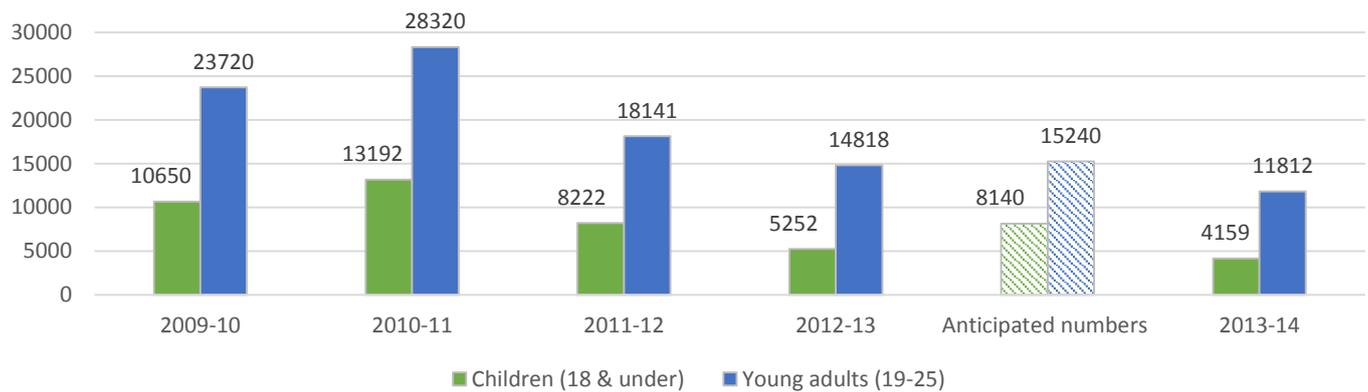
Sources: i) Data for 2010/11 to 2013/14 comes from written parliamentary answers by Mike Penning MP on 05/02/15 in response to PQs 22917 & 22918. ii) Data for 2009/10 and anticipated post-LASPO numbers were provided by Ministry of Justice on 10/10/11 in response to Freedom of Information requests made by JustRights and The Children's Society.

4.2 Trends in Immigration and Asylum legal aid use (see Fig. 2):

- Numbers of Immigration and Asylum cases peaked in 2010-11 before LASPO changes and have fallen rapidly since – to well below post-LASPO anticipated levels
- Children's cases have fallen by 68% in just 3 years – to barely half of anticipated levels.
- Young adults' cases have fallen by 58% in the same period.

¹² All anticipated post-LASPO numbers in this paper have been taken from Ministry of Justice calculations of how many of the cases that were funded in 2010-11 would remain in scope after implementation of LASPO changes.

Fig. 2: Number of children & young people who received Immigration and Asylum legal aid 2009-10 to 2013-14 compared to post-LASPO numbers anticipated by MoJ

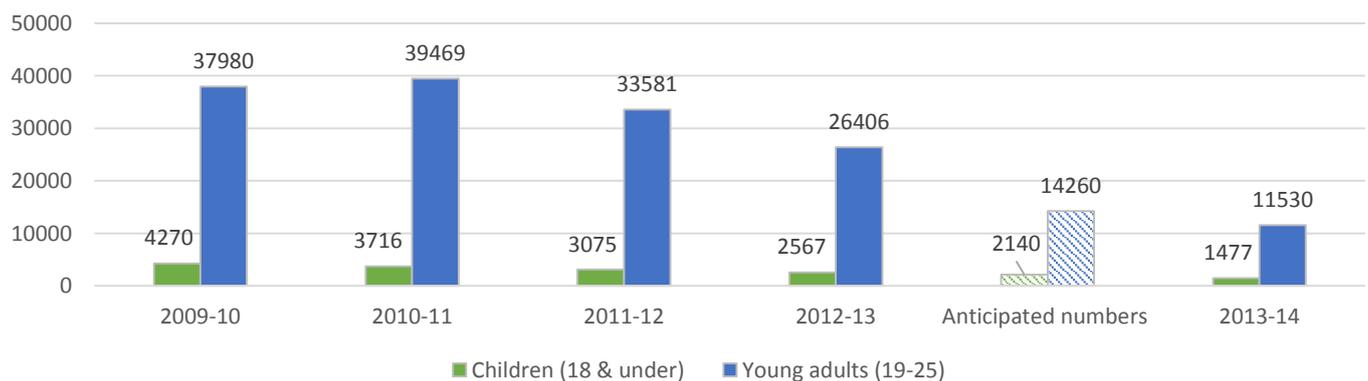


Sources: i) Data for 2010/11 to 2013/14 comes from written parliamentary answers by Mike Penning MP on 05/02/15 in response to PQs 22917 & 22918. ii) Data for 2009/10 and anticipated post-LASPO numbers were provided by Ministry of Justice on 10/10/11 in response to Freedom of Information requests made by JustRights and The Children's Society.

4.3 Trends in Social Welfare legal aid use (see Fig. 3):

- Numbers of Social Welfare Law cases where children are the recipient of legal aid have fallen 65% in 4 years and last year were running 45% below even the reduced levels anticipated following LASPO.
- Cases involving young adults have also fallen below anticipated levels and are 71% down on their peak in 2010-11.

Fig. 3: Number of children & young people who received Social Welfare legal aid 2009-10 to 2013-14 compared to post-LASPO numbers anticipated by MoJ

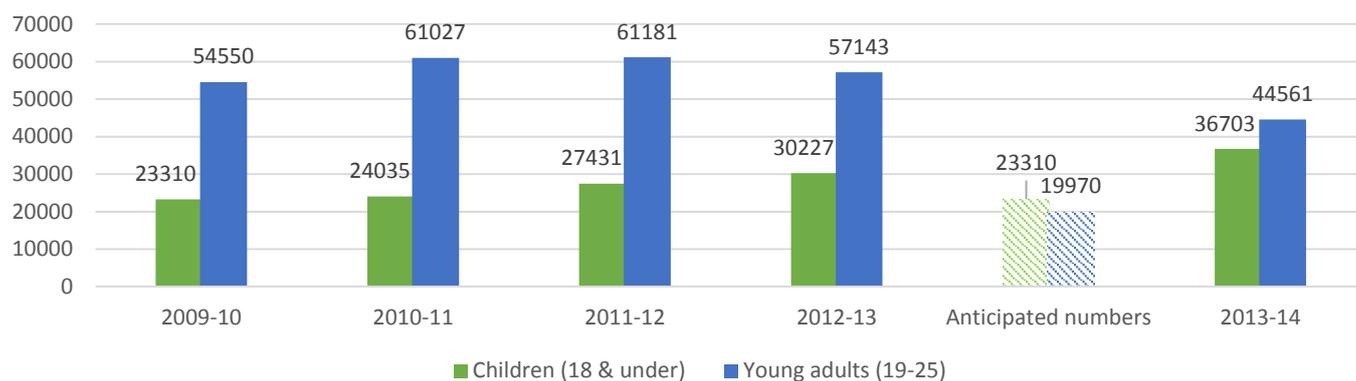


Sources: i) Data for 2010/11 to 2013/14 comes from written parliamentary answers by Mike Penning MP on 05/02/15 in response to PQs 22917 & 22918. ii) Data for 2009/10 and anticipated post-LASPO numbers were provided by Ministry of Justice on 10/10/11 in response to Freedom of Information requests made by JustRights and The Children's Society.

4.4 Trends in Family legal aid use (see Fig. 4):

- Numbers of Family cases involving children have risen by 57% in just 4 years and have continued to rise since implementation of LASPO changes in April 2013.
- Family cases involving young adults have fallen by 22% since LASPO, but remain more than twice the level anticipated.

Fig. 4: Number of children & young people who received **Family legal aid** 2009-10 to 2013-14 compared to post-LASPO numbers anticipated by MoJ



Sources: i) Data for 2010/11 to 2013/14 comes from written parliamentary answers by Mike Penning MP on 05/02/15 in response to PQs 22917 & 22918. ii) Data for 2009/10 and anticipated post-LASPO numbers were provided by Ministry of Justice on 10/10/11 in response to Freedom of Information requests made by JustRights and The Children's Society.

5. Exceptional funding – the safety net is not working

Since April 2013, the Legal Aid Agency has operated a system of considering applications for civil legal aid funding on an exceptional basis.

During the passage of the LASPO Act, ministers repeatedly reassured MPs and Peers from all parties who were worried about the prospect of children and young people being denied access to advice and representation that there would be a safety net in the form of an expanded Exceptional Case Funding scheme.

Factors to be taken into account by the Legal Aid Agency when deciding applications for exceptional funding include the importance of the issues at stake, the complexity of the procedures and the capability of the applicant to present their case effectively. The legal aid minister, Shailesh Vara, recently confirmed that *“the age of the child or young person applicant is one factor which caseworkers will always consider”*.¹³

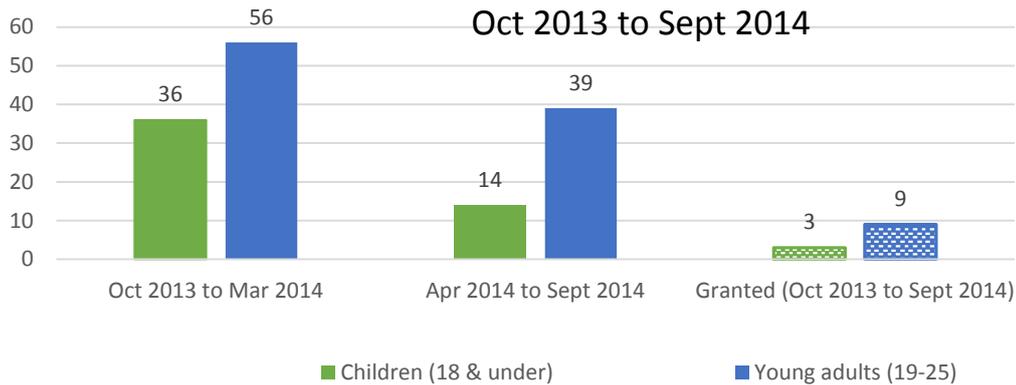
Yet, recent data released by the Ministry of Justice shows that this safety net is not working and that the age of the applicant may not be being taken into account.

As Fig. 5 shows, only 50 children and 95 young adults applied for Exceptional Case Funding in the 12 months from October 2013 to September 2014.

Of these 145 applications, a mere twelve (representing 8%) were granted, including just three (6%) of the applications from children aged 18 and under.

¹³ Written parliamentary answer by Shailesh Vara MP on 10/02/15 in response to PQ 223066.

Fig. 5: Number of children and young people who applied for and were granted legal aid under the Exceptional Case Funding scheme



Source: Written parliamentary answers by Shailesh Vara MP on 10/02/15 in response to PQs 222961, 223099, 223066 and 223067.

JustRights is deeply concerned by these figures, which are far lower than those budgeted for by the Ministry of Justice. The Ministry of Justice's own estimates¹⁴ of the percentage of 'out of scope' cases that were likely to be readmitted under the Exceptional Case Funding scheme were modest. Yet even these modest estimates would have meant exceptional funding grants for at least 847 children and 4,888 young adults each year.¹⁵ An academic analysis of unmet legal need indicated that as many as 48,800 cases involving young people aged 18-24 had the potential to be readmitted as exceptional on grounds of mental ill-health of the young person alone.¹⁶

JustRights believes that it would be in the interests of justice – and ultimately save money – if all children and young people were passported automatically through the scheme. However, the Minister has recently confirmed that the Government has no current plans to passport children and young people.¹⁷

Call to action

JustRights believes that the current situation, in which many children and young people are unable to access the legal advice and representation they need, places the UK squarely in breach of its obligations under the United Nations Convention on the Rights of Children. The effect is that justice is being denied to those who need it most, with far-ranging and expensive consequences.

Existing resources and services are not meeting children and young people's needs.

We call on each political party to:

- Listen to the voices of children and young people – read their [Make Our Rights Reality manifesto](#)
- Urgently review children and young people's access to justice
- Commit to meeting children and young people's needs by guaranteeing access to free legal advice and representation
- Work with JustRights to re-design legal services for children and young people so that existing resources are used more effectively and efficiently

¹⁴ *Reform of Legal Aid in England and Wales: The Government Response, 'Impact Assessment Annex A: Scope'*, Ministry of Justice, 2011.

¹⁵ Our calculations assume that children and young people's applications would be no more or less likely to be granted than those of other age groups. Including a presumption that age of applicant would be taken into account by the Legal Aid Agency in making decisions would produce far higher figures.

¹⁶ *The Legal Problems and Mental Health Needs of Youth Advice Service Users: The Case for Advice*, Balmer, N., and Pleasence, P., Youth Access, 2012. See Appendix 3.

¹⁷ Written parliamentary answer by Shailesh Vara MP on 10/02/15 in response to PQ 223067.

FURTHER INFORMATION

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